

recognized that it would take time for competitors to construct or upgrade networks and then to extend service offerings to residential and business subscribers.¹²⁹ As the Joint Explanatory Statement observes, "it is unlikely that competitors will have a fully redundant network in place when they initially offer service, because the investment necessary is so significant."¹³⁰ Rather, as many commenters recognize, because potential competitors must accomplish a number of things before they may begin to provide telephone exchange service, such as obtaining a certificate of convenience and necessity from the state commission, negotiating (and arbitrating, if necessary) an interconnection agreement with the BOC, obtaining state approval of that agreement, filing and obtaining approval of a tariff for local exchange service, and implementing their interconnection agreement, it will inevitably take some time before these carriers can actually begin to provide telephone exchange service.¹³¹ Congress' recognition that this transformation to operational status would not be an instantaneous one is evidenced by the Joint Explanatory Statement's observation that, "it is important that the Commission rules to implement new section 251 be promulgated within 6 months after the date of enactment so that *potential* competitors will have the benefit of being informed of the Commission rules in requesting access and interconnection before the statutory window in new section 271(c)(1)(B) shuts."¹³²

44. That Congress expected there to be a "ramp-up" period for requesting carriers to become operational competitors is further evidenced by section 251 itself. In adopting section 251, Congress acknowledged that the development of competition in local exchange markets is dependent, to a large extent, on the opening of the BOCs' networks.¹³³ Under section 251, incumbent LECs, including BOCs, are required to take certain steps to open their networks including "providing interconnection, offering access to unbundled elements of their networks, and making their retail services available at wholesale rates so that they can be resold."¹³⁴ Our rules implementing section 251 envisioned that incumbent LECs would need some time to complete these necessary steps. For example, in the *Local Competition Order*,

months have passed since the date of enactment of the Telecommunications Act of 1996, *whichever is earlier*." See 47 U.S.C. § 271(e)(1) (emphasis added); Sprint Apr. 28 Comments at 10-11 n. 9.

¹²⁹ See Sprint Apr. 28 Comments at 9-10.

¹³⁰ Joint Explanatory Statement at 148.

¹³¹ Department of Justice Evaluation at 13; CPI Apr. 28 Comments at 8; MCI Reply Comments at 4-5; WorldCom Apr. 28 Comments at 11.

¹³² Joint Explanatory Statement at 148-49 (emphasis added).

¹³³ As the Department of Justice observes, a "fundamental premise of the 1996 Act is that the development of local exchange competition will require opening up the possibilities for access and interconnection to the BOC's local network." Department of Justice Evaluation at 10.

¹³⁴ *Local Competition Order*, 11 FCC Rcd at 15506.

we stated that incumbent LECs must have made modifications to their operational support systems (OSS) necessary to provide access to OSS functions by January 1, 1997.¹³⁵

Moreover, in the *Second Order on Reconsideration*, we declared that we would not take enforcement action against incumbent LECs "making good faith efforts to provide . . . access [to OSS functions]."¹³⁶ In reaching these conclusions, we recognized that some incumbent LECs would require some time before they would be able to provide potential competitors access to their OSS.

45. Moreover, we find that the very language of section 271(c)(1)(B) confirms that Congress envisioned the existence of a "ramp-up" period.¹³⁷ The exceptions in section 271(c)(1)(B) are indicative of Congress' recognition that there would be a period during which good-faith negotiations are taking place, interconnection agreements are being reached, and the potential competitors are becoming operational by implementing their agreements.¹³⁸ By delineating the circumstances under which Track B becomes available to the BOC, Congress must have understood that there would often be some time when Track B is unavailable, but the BOC has not yet satisfied the requirements of section 271(c)(1)(A).¹³⁹ This would not be the case, however, under SBC's theory that only a request for access and interconnection from an operational facilities-based provider will foreclose Track B.

46. Further, as a matter of policy, we find that our interpretation of "such provider" is consistent with the incentives established by Congress in section 271. In order to gain entry under Track A, a BOC must demonstrate that it has "fully implemented" the competitive checklist in section 271(c)(2)(B).¹⁴⁰ Thus, by expecting Track A to be the primary means of BOC entry, Congress created an incentive for BOCs to cooperate with potential competitors in the provision of access and interconnection and thereby facilitate competition in local exchange markets. In contrast, Track B, which requires only that a BOC "offer[]" the items

¹³⁵ *Id.* at 15767-68.

¹³⁶ *Local Competition Order, Second Order on Reconsideration*, CC Docket No. 96-98, FCC 96-476 at para. 11 (rel. Dec. 13, 1996).

¹³⁷ Dobson Apr. 28 Comments at 3 (asserting that the language of section 271(c)(1)(B) confirms that Congress envisioned the existence of a hiatus during which pending requests would preclude BOCs from applying under Track B even though the requesting carriers are not yet operational); WorldCom Apr. 28 Comments at 11-12.

¹³⁸ See 47 U.S.C. § 271(c)(1)(B). See also Brooks Apr. 28 Comments at 5-6; Dobson Apr. 28 Comments at 3; WorldCom Apr. 28 Comments at 11-12.

¹³⁹ See Cox May 1 Comments at 7 n. 9 (stating that the exceptions in section 271(c)(1)(B) demonstrate that Congress understood there would be a lag between requesting interconnection and providing service, and that it did not intend for normal delays to permit BOCs to jump to Track B).

¹⁴⁰ 47 U.S.C. § 271(d)(3)(A)(i).

included in the competitive checklist, does not contemplate the existence of competitive local entry and, therefore, does not create such an incentive for cooperation.¹⁴¹ Rather, as discussed more fully below, Congress intended Track B to serve as a limited exception to the Track A requirement of operational competition so that BOCs would not be unfairly penalized in the event that potential competitors do not come forward to request access and interconnection, or attempt to "game" the negotiation or implementation process in an effort to deny the BOCs in-region interLATA entry.¹⁴²

47. In addition, if we were to find that only a request from an operational competing facilities-based provider of residential and business service forecloses Track B, this would guarantee that, after ten months, the BOC either satisfies the requirements of section 271(c)(1)(A) or is eligible for Track B.¹⁴³ As the Department of Justice asserts, "[s]uch an interpretation of [s]ection 271 would radically alter Congress' scheme, [by] expanding Track B far beyond its purpose and, for all practical purposes, reading the carefully crafted requirement of Track A out of the statute."¹⁴⁴ For example, under SBC's theory, either a BOC has received a "qualifying request" from a carrier that already satisfies the requirements of section 271(c)(1)(A), or the BOC may proceed under Track B.¹⁴⁵ SBC advocates an interpretation of the statute where the circumstances under which a competing provider may make a "qualifying request" would be so rare that, after December 8, 1996, Track B would be available in any state that lacks a competing provider of the type of telephone exchange service to residential and business subscribers described in section 271(c)(1)(A).¹⁴⁶ As WorldCom maintains, this would lead to the illogical result that BOCs that successfully delay

¹⁴¹ *Id.* § 271(d)(3)(A)(ii).

¹⁴² *See infra* at para. 55. *See also* CompTel Apr. 28 Comments at 3; Department of Justice Evaluation at 11; Sprint Apr. 28 Comments at 10-11; TRA Apr. 28 Comments at 4-5.

¹⁴³ Or, as SBC alleges in the instant case, a BOC would be eligible to proceed under both Track A and Track B if the qualifying request was made within the three months prior to the filing of the BOC's section 271 application. We recognize, of course, that in order to be eligible for Track B a BOC must also have a statement of generally available terms and conditions that has been approved or permitted to take effect by the applicable state commission. *See* 47 U.S.C. § 271(c)(1)(B).

¹⁴⁴ Department of Justice Evaluation at 13.

¹⁴⁵ *See* MCI Apr. 28 Comments at 3 (claiming that, under SBC's interpretation, Track B would only apply when no facilities-based provider that already has an access and interconnection agreement requests such an agreement); NCTA May 1 Comments at 7 (stating that SBC construes the statute so that after ten months Track B would virtually always apply unless a competitor who already qualifies as a facilities-based competitor to residential and business subscribers requests access three months before the BOC files).

¹⁴⁶ *See* Cox Reply Comments at 16 (asserting that, if the BOCs really believed Track B became available if no operational competing provider requested access and interconnection prior to September 8, 1996, they would have filed their statements of generally available terms by the middle of 1996 and applied for in-region, interLATA entry on December 8, 1996).

or prevent entry into their local markets by new entrants that have requested access and interconnection under section 251 would be rewarded by being granted the right to pursue in-region interLATA entry through Track B.¹⁴⁷ As a consequence, BOC in-region interLATA entry would, in most states, precede the introduction of local competition.¹⁴⁸ We find it unlikely that Congress intended to eviscerate Track A in this manner. As the Department of Justice contends, there is "no basis for the assumption that Congress intended Track A, the only track included in the bill as originally passed by the Senate, to play such an insignificant role."¹⁴⁹

48. In addition to its notion of a "post-dated" request, SBC sets forth two other hypothetical scenarios in which the BOC could receive a "qualifying request" from an already operational carrier that forecloses Track B.¹⁵⁰ Although SBC does not argue that either of these hypothetical situations is present here, we briefly describe them to illustrate their limited application. Under one scenario, SBC argues that it could receive a request for access and interconnection from a competing LEC that is already providing facilities-based telephone exchange service to residential and business customers completely over its own network. Alternatively, SBC maintains it could receive a request for access and interconnection from a competing LEC that had negotiated an interconnection agreement prior to the 1996 Act.¹⁵¹

49. As an initial matter, we note that SBC appears to set forth a reading of the word "request" in these hypothetical scenarios that is different from the one it uses in characterizing Brooks' request for access and interconnection in the instant application. SBC appears to assert that, for the purposes of the hypothetical scenarios, whether a request for access and interconnection constitutes a qualifying request is determined at the time the request is made. For the purposes of the case at hand, however, SBC claims that Brooks' request for access and interconnection was not qualifying at the time it was made, but subsequently became a qualifying request when Brooks became operational. SBC fails to explain how the meaning of the statutory term "request" can vary according to the operational status of the requestor.

¹⁴⁷ WorldCom Apr. 28 Comments at 13-14; WorldCom May 1 Comments at 20-21; Department of Justice Evaluation at 13 (stating that, if SBC's interpretation of Track B were correct, Track B would no longer be a limited exception applicable where a BOC would otherwise be foreclosed indefinitely from entry into in-region interLATA markets). *See also* AT&T May 1 Comments at 18; NCTA May 1 Comments at 7 (stating that SBC's interpretation of section 271(c)(1)(B) nullifies Track A agreements as a means of stimulating local competition).

¹⁴⁸ WorldCom Reply Comments at 7; TRA Reply Comments at 11-12.

¹⁴⁹ Department of Justice Evaluation at 14. *See also* MCI Reply Comments at 4.

¹⁵⁰ SBC Apr. 28 Comments at 16-17. *See also* BellSouth Apr. 28 Comments at 4-5.

¹⁵¹ SBC Apr. 28 Comments at 16-17 (citing 142 Cong. Rec. S713 (daily ed. Feb. 1, 1996) (statement of Sen. Breaux)); BellSouth Apr. 28 Comments at 4-5.

50. In addition, we agree with the Department of Justice that it is implausible that Congress would have adopted Track A solely to deal with situations of such narrowly limited significance as SBC poses in its hypotheticals.¹⁵² SBC's first scenario assumes the presence of a carrier, prior to the 1996 Act, with a completely duplicative, ubiquitous network that provided telephone exchange service to residential and business subscribers in competition with a BOC, but did not yet have an access and interconnection agreement with the BOC.¹⁵³ We know of no such carrier.¹⁵⁴ Indeed, the legislative history of the Act reflects Congress' recognition that the existence of such facilities-based competition in local markets in February 1996 was improbable.¹⁵⁵ Similarly, the second scenario assumes the presence of either a facilities-based competing LEC that provided telephone exchange service to both residential and business subscribers under a pre-1996 Act interconnection agreement or a facilities-based competing LEC with a pre-1996 Act interconnection agreement that would be capable of providing such service within the statutory window in section 271(c)(1)(B). If there were such interconnection agreements in place between a BOC and a competing LEC operating within a BOC's service area, we do not know of them.¹⁵⁶

51. Notably, SBC's primary support for the second scenario is the Joint Explanatory Statement's reference to an interconnection agreement between New York Telephone and Cablevision in Long Island, NY.¹⁵⁷ We disagree with SBC that this reference demonstrates that "Congress was aware that, in various markets throughout the country, cable companies and competitive access providers had negotiated interconnection agreements with

¹⁵² Department of Justice Evaluation at 14.

¹⁵³ See Oklahoma AG Apr. 28 Comments at 7. As noted above, such a carrier would presumably require interconnection with the BOC if its customers completed calls to, or received originating calls from, BOC customers. See *supra* at para. 33.

¹⁵⁴ Significantly, the Department of Justice asserts that it "is not aware of any provider other than the [incumbent LECs] that had a significant facilities-based telephone local exchange network of its own in the United States, sufficiently ubiquitous to dispense with interconnection with the BOCs, before the 1996 Act was passed." Department of Justice Evaluation at 15 n. 20. See also AT&T Reply Comments at 73. We note that neither SBC nor any other commenter has provided any examples of such carriers.

¹⁵⁵ See Joint Explanatory Statement at 148 ("it is unlikely that competitors will have a fully redundant network in place when they initially offer local service . . .").

¹⁵⁶ Although in an *ex parte* statement, SBC cites examples of "facilities-based cable-telephone services being provided or tested during consideration of the [1996 Act]," it is unclear from SBC's representation whether these potential competitors were providing, or planning to provide, telephone exchange service in a BOC's service area pursuant to a pre 1996-Act interconnection agreement or, alternatively, whether the new entrants still had to negotiate and execute such agreements. See Letter from Dale Robertson, Senior Vice President, SBC, to William F. Caton, Acting Secretary, FCC at 2 (June 24, 1996) (SBC June 24 *Ex Parte*).

¹⁵⁷ See *id.*

incumbent LECs prior to the 1996 Act."¹⁵⁸ As the Department of Justice observes, a single reference to only one pre-1996 Act interconnection agreement between an incumbent LEC and a facilities-based provider **does not** establish that Congress expected such situations to be common.¹⁵⁹ Indeed, it is not obvious from this reference in the legislative history whether Cablevision either actually provided telephone exchange service to both residential and business subscribers on the date of enactment or intended to do so in the future.¹⁶⁰ Based on its experience with the implementation of the 1996 Act nationwide, the Department of Justice notes that only a small minority of states had any local exchange competition before the 1996 Act was passed, and very few providers had become operational.¹⁶¹ Moreover, the very passage of the 1996 Act -- which was designed to remove impediments to local entry -- indicates that Congress believed that the degree of local telephone competition and interconnection prior to the passage of the 1996 Act was unsatisfactory.

52. Even if there were such facilities-based carriers with pre-1996 Act interconnection agreements, we find that SBC's interpretation would greatly undermine the very incentives that Congress sought to establish in section 271. As mentioned above, section 271 and, in particular, Track A, was established to provide an incentive for BOCs to cooperate in the development of local competition. Under SBC's interpretation of the statute, the BOCs' only incentive would be to cooperate with operational carriers that are already receiving access and interconnection. We find that the incentive to cooperate established by Track A is not limited to only those carriers that are already operational, but instead was designed to ensure that BOCs facilitate the entry of a larger and more significant class of carriers -- *potential* competitors requesting access and interconnection. It would be anomalous for Congress to have adopted Track A solely to provide an incentive to BOCs to cooperate with already competing providers, which do not require the BOCs' cooperation in order to become operational.

53. We note that, if such a competing LEC was not already providing the type of telephone exchange service described in section 271(c)(1)(A) at the time of passage of the

¹⁵⁸ SBC Apr. 28 Comments at 16.

¹⁵⁹ Department of Justice Evaluation at 15 n.19. See also WorldCom Reply Comments at 6-7.

¹⁶⁰ But see SBC June 24 *Ex Parte*, Attachment at 1-2 (asserting that by December 1995 "Cablevision had 175 business customers and was preparing to offer residential service on a commercial basis").

¹⁶¹ Department of Justice Evaluation at 15 n.19. According to the Commission's Common Carrier Competition Report, as of March 21, 1996, competing LECs were operational in only five states. "New competitors [were] small and [were] still experimenting in the market." Common Carrier Competition, CC Report No. 96-9, FCC, Common Carrier Bureau, Spring 1996 at 3-4 (Common Carrier Competition Report). See also TRA Reply Comments at 10-11. SBC itself points to only ten potential competitors in five states, one of which is Cablevision, that were planning, testing, or providing telephony services on a limited scale prior to the passage of the 1996 Act. Of these potential competitors, it appears that most of them were merely in the planning or testing stage when the 1996 Act was passed. See SBC June 24 *Ex Parte*, Attachment at 1-2.

1996 Act and if it chose to obtain a new agreement pursuant to section 252, it would have to engage in negotiations with the BOC, reach an interconnection agreement, obtain state approval of this interconnection agreement under section 252(e)(4),¹⁶² and then begin providing the type of telephone exchange service to residential and business subscribers described in section 271(c)(1)(A) before its request for access and interconnection could be considered qualifying under SBC's interpretation of section 271(c)(1)(B). As the Department of Justice recognizes, in order for the BOC to be precluded from filing under Track B, the competing LEC would have to complete all of this in the first seven months after the date of enactment.¹⁶³ Not only is this unlikely, but this scenario assumes that the BOC would be inclined to cooperate with the competing LEC, reach a negotiated agreement quickly, and proceed under the more rigorous Track A standard, rather than attempt to delay the advent of competition by forcing competing LECs to resort to arbitration until Track B becomes available. Under SBC's interpretation, given the nine-month arbitration deadlines established in section 252(b)(4)(C), a BOC could virtually guarantee its eligibility under Track B by placing all carrier negotiations in arbitration.¹⁶⁴ It seems, therefore, that few, if any, potential competitors would be in a position, under this interpretation, to make a "qualifying request" for access and interconnection before a BOC would become eligible to pursue Track B.¹⁶⁵

54. Although we reject SBC's interpretation of "qualifying request," we also reject the interpretation of those parties who argue that *any* request from a potential competitor forecloses Track B. As the Department of Justice observes, the term "such provider" in section 271(c)(1)(B) should be interpreted with reference to the type of facilities-based competition that would satisfy the requirements of section 271(c)(1)(A).¹⁶⁶ Accordingly, we conclude that the request from a potential competitor must be one that, *if implemented*, will satisfy section 271(c)(1)(A).¹⁶⁷ That is, we find that a "qualifying request" must be one for access and interconnection to provide the type of telephone exchange service to residential

¹⁶² Under this section, the state commission has up to 90 days to approve or reject an interconnection agreement. See 47 U.S.C. § 252(e)(4).

¹⁶³ See Department of Justice Evaluation at 14. Pursuant to section 271(c)(1)(B), in order for a BOC to file an application under Track B as soon as it became available, on December 8, 1996, it must not have received a qualifying request prior to September 8, 1996.

¹⁶⁴ 47 U.S.C. § 252(b)(4)(C). See Sprint Apr. 28 Comments at 11-12 n.10. See also Cox Reply Comments at 15-16. We also note that, after the parties reach an arbitrated agreement, it must be submitted to the applicable state commission for approval. Under section 252(e)(4), the state commission has 30 days in which to approve or deny it. 47 U.S.C. § 252(e)(4).

¹⁶⁵ See Department of Justice Evaluation at 14.

¹⁶⁶ *Id.* at 12.

¹⁶⁷ See LCI Apr. 28 Comments at 6 (stating that SBC's agreement with Brooks "was of the type that once implemented, would provide [SBC] with the basis for seeking approval under Track A.").

and business subscribers described in section 271(c)(1)(A). To find otherwise would not only be contrary to the explicit terms of section 271(c)(1)(B), which states that only a request for "the access and interconnection described in [section 271(c)(1)(A)]" can foreclose Track B,¹⁶⁸ but would lead to anomalous results. For example, allowing *any* type of request for negotiation to foreclose Track B could lead to a situation where a BOC is foreclosed from pursuing Track B because there has been a request for negotiation, even though such a request, when implemented, may not satisfy the requirements of section 271(c)(1)(A). As Ameritech observes, under this interpretation, if a BOC receives a request for access and interconnection from a would-be facilities-based provider of telephone exchange service to business, but not residential, subscribers, Track B would be foreclosed, but the BOC would not be able to satisfy section 271(c)(1)(A) because it would not be able to show that residential subscribers are served by a competing provider. Such a result may place a BOC indefinitely in a "no-man's land" where, in effect, neither Track A nor Track B is available to it.¹⁶⁹

55. According to its legislative history, Track B was adopted by Congress to deal with the possibility that a BOC, through no fault of its own, could find that it is unable to satisfy Track A.¹⁷⁰ The Joint Explanatory Statement explains that section 271(c)(1)(B) is "intended to ensure that a BOC is not effectively prevented from seeking entry into the interLATA services market simply because no facilities-based competitor that ~~meets the~~ criteria set out in new section 271(c)(1)(A) has sought to enter the market."¹⁷¹ Similarly, the House Committee Report elaborates that, to "the extent that a BOC does not receive a request from a competitor that comports with the criteria [described in section 271(c)(1)(A)], it [should] not [be] penalized in terms of its ability to obtain long distance relief."¹⁷² In this manner, Track B appropriately safeguards the BOCs' interests where there is no ~~prospect~~ of local exchange competition that will satisfy the requirements of section 271(c)(1)(A) or in the event competitors purposefully delay entry in the local market in an attempt to ~~prevent~~ a BOC from gaining in-region, interLATA entry.¹⁷³ As the Department of Justice observes, however, "Track B does not represent congressional abandonment of the fundamental principle, carefully set forth in Track A, that a BOC may not begin providing in-region interLATA

¹⁶⁸ 47 U.S.C. § 271(c)(1)(B).

¹⁶⁹ See also Department of Justice Evaluation at 11. This assumes, of course, that the BOC is ~~not~~ able to show that the requesting provider failed to negotiate in good faith or violated the terms of the interconnection agreement by failing to comply, within a reasonable period of time, with its implementation schedule. See 47 U.S.C. § 271(c)(1)(B).

¹⁷⁰ Department of Justice Evaluation at 12.

¹⁷¹ Joint Explanatory Statement at 148.

¹⁷² House Report at 77.

¹⁷³ Department of Justice Evaluation at 17.

services before there are facilities-based competitors in the local exchange market," provided these competitors are moving toward that goal in a timely fashion.¹⁷⁴

56. Thus, while SBC's interpretation would ensure that after ten months a BOC either satisfies the requirements of section 271(c)(1)(A) or is eligible to proceed under Track B, the interpretation of the potential competitors could create a situation where the BOC may not be able to pursue either statutory avenue for interLATA relief. In essence, while SBC's interpretation effectively nullifies Track A, the potential competitors' interpretation effectively nullifies Track B. We are keenly aware that adopting the interpretation urged by the potential competitors would necessarily foreclose Track B entry in any state in which a potential competitor has made a request for access and interconnection, regardless whether it is a request that will ever lead to the type of telephone exchange service described in section 271(c)(1)(A).¹⁷⁵ We find that permitting *any* request to foreclose Track B would give potential competitors an incentive to "game" the section 271 process by purposefully requesting interconnection that does not meet the requirements of section 271(c)(1)(A), but prevents the BOCs from using Track B.¹⁷⁶ Such a result would effectively give competing LECs the power to deny BOC entry into the long distance market. This is surely not the result that Congress intended in adopting Track B.

57. We recognize, as several parties point out, that the standard we are adopting will require the Commission, in some cases, to engage in a difficult predictive judgment to determine whether a potential competitor's request will lead to the type of telephone exchange service described in section 271(c)(1)(A).¹⁷⁷ As discussed above, however, we find that this type of judgment is required by the terms of section 271 and is consistent with the statutory scheme envisioned by Congress. The standard we adopt in this Order is designed to take into account both the BOCs' incentive to delay fulfillment of requests for access and interconnection and the incentive of potential local exchange competitors to delay the BOCs' entry into in-region interLATA services. Upon receipt of a "qualifying request," as we interpret it, the BOC will have an incentive to ensure that the potential competitor's request is

¹⁷⁴ *Id.* at 17-18.

¹⁷⁵ We note that Track B would become available if either of the two exceptions in section 271(c)(1)(B) were applicable. *See also* BellSouth Apr. 28 Comments at 5 (maintaining that adoption of ALTS's "misreading" of section 271(c)(1) would nullify Track B entry).

¹⁷⁶ Ameritech Apr. 28 Comments at 5 n. 3; Bell Atlantic Apr. 28 Comments at 8 (stating that the approach advocated by ALTS would place BOCs at the mercy of their competitors); NYNEX Apr. 28 Comments at 6; U S West Apr. 28 Comments at 5-6.

¹⁷⁷ CPI Reply Comments at 3; *see also* Bell Atlantic Apr. 28 Comments at 7; BellSouth Apr. 28 Comments at 4; SBC Reply Comments at 6 & Appendix A at 14 n.6.

quickly fulfilled so that the BOC may pursue entry under Track A.¹⁷⁸ As long as the qualifying request remains unsatisfied, the requirements of section 271(c)(1)(A) would remain unsatisfied, and Track B would remain foreclosed to the BOC.

58. Further, our standard will not allow potential competitors to delay indefinitely BOC entry by failing to provide the type of telephone exchange service described in Track A. Indeed, in some circumstances, there may be a basis for revisiting our decision that Track B is foreclosed in a particular state. For example, if following such a determination a BOC refiles its section 271 application, we may reevaluate whether it is entitled to proceed under Track B in the event relevant facts demonstrate that none of its potential competitors is taking reasonable steps toward implementing its request in a fashion that will satisfy section 271(c)(1)(A). In addition, as discussed above, the exceptions in section 271(c)(1)(B) provide that a BOC will not be deemed to have received a qualifying request if the applicable state commission certifies that the requesting carrier has failed to negotiate in good faith or failed to abide by its implementation schedule. In this manner, these exceptions also provide BOCs a means of protecting themselves against any feared "gamesmanship" on the part of potential competitors, such as the submission of sham requests intended solely to preclude BOC entry. We therefore disagree with Bell Atlantic that our standard will leave the BOCs "hostage to the claims of competitors."¹⁷⁹ Moreover, for the reasons set forth above, we disagree with CPI that concerns about gamesmanship are misplaced.¹⁸⁰ Finally, we note that the Commission is called upon in many contexts to make difficult determinations and has the statutory mandate to do so.¹⁸¹ The fact that a determination, such as the one we must make

¹⁷⁸ Thus, as the Department of Justice observes, properly construed, "the statute serves Congress' procompetitive purposes by affording the BOC a strong incentive to cooperate as would-be facilities-based competitors attempt to negotiate agreements and become operational." Department of Justice Evaluation at 17.

¹⁷⁹ See Bell Atlantic Reply Comments at 4.

¹⁸⁰ See *supra* at para. 56; CPI Reply Comments at 4-5 (asserting that the assumption that competitors would game the regulatory process in order to prevent BOC entry into long distance does not make economic or marketplace sense).

¹⁸¹ See 47 U.S.C. § 154(i). In different contexts, the United States Supreme Court has recognized that the Commission must necessarily make difficult predictive judgments in order to implement certain provisions of the Communications Act. See *FCC v. WNCN Listeners Guild*, 450 U.S. 582, 594-96 (1981) (recognizing that the Commission's decisions must sometimes rest on judgment and prediction rather than pure factual determinations) (citing *FCC v. Nat'l Citizens Comm. for Broadcasting*, 436 U.S. 775, 813-814 (1978)); *NAACP v. FCC*, 682 F.2d 993 (D.C. Cir. 1982) ("greater discretion is given administrative bodies when their decisions are based upon judgmental or predictive conclusions"). See also *Pub. Util. Comm'n of State of Cal. v. F.E.R.C.*, 24 F.3d 275, 281 (D.C. Cir. 1994) (acknowledging that predictions regarding the actions of regulated entities are the type of judgments that courts routinely leave to administrative agencies). Indeed, we note that determining whether a BOC's section 271 application meets the requirements of the competitive checklist, the requirements of section 272, and is consistent with the public interest, convenience and necessity will require the Commission to engage in highly complex, fact-intensive analyses. See 47 U.S.C. § 271(d)(3).

here, may be complex does not mean the Commission may avoid its statutory duty to undertake it.

59. We also reject NYNEX's argument that Track B is available in any situation where one or more facilities-based providers, as described in section 271(c)(1)(A), have not requested interconnection agreements that include all fourteen items of the competitive checklist.¹⁸² By its terms, Track B is only available in the event the BOC fails to receive a qualifying request for the access and interconnection "described in [section 271(c)(1)(A)]." As discussed above, we have determined that a qualifying request is a request from a potential competitor that, if implemented, will satisfy the requirements of section 271(c)(1)(A). Pursuant to section 271(c)(1)(B), a BOC shall not be considered to have received a qualifying request if the requesting carrier fails to negotiate in good faith or does not abide by the implementation schedule contained in its agreement.¹⁸³ We find that section 271(c)(1) and the competitive checklist in section 271(c)(2)(B) establish independent requirements that must be satisfied by a BOC applicant. Thus, the fact that a BOC has received a request for access and interconnection that, if implemented, will satisfy section 271(c)(1)(A), does not mean that the interconnection agreement, when implemented, will necessarily satisfy the competitive checklist. Similarly, we find nothing in the terms of section 271(c)(1)(A) or section 271(c)(1)(B) that suggest that a qualifying request for access and interconnection must be one that contains all fourteen items in the checklist. In rejecting NYNEX's contention, we do not reach the question of whether a potential competitor's interconnection agreement must contain all fourteen items of the competitive checklist in order for a BOC to demonstrate its compliance with the competitive checklist in section 271(c)(2)(B).

3. Existence of Qualifying Requests in Oklahoma

60. Consistent with the requirements set forth by Congress, SBC's ability to proceed under Track B is not foreclosed unless there has been a timely request for access and interconnection from a potential provider of the type of telephone exchange service described in section 271(c)(1)(A). We note that the determination of whether the BOC has received such a qualifying request will be a highly fact-specific one. At the same time, however, Congress required the Commission to make determinations on a BOC's section 271 application within 90 days. Given the expedited time in which the Commission must review these applications, it is the responsibility of the BOC to submit to the Commission a full and complete record upon which to make determinations on its application.¹⁸⁴ In this regard, we

¹⁸² NYNEX Apr. 28 Comments at 1-2. The competitive checklist is contained in 47 U.S.C. § 271(c)(2)(B).

¹⁸³ See 47 U.S.C. § 271(c)(1)(B).

¹⁸⁴ BOCs are required under our rules to maintain "the continuing accuracy and completeness of information" furnished to the Commission. See *Application by Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan*, CC

find it of great significance that, in its application, SBC does not argue that none of the requests it has received will lead to the type of telephone exchange service described in section 271(c)(1)(A). Instead, SBC contends that the only relevant determination for the purposes of section 271(c)(1)(B) is whether it has received a request for access and interconnection from an already competing provider of such service. Thus, by declining to argue in the alternative, SBC has not addressed the issue we must resolve here -- whether SBC has received a timely request for access and interconnection that, if implemented, will lead to the type of telephone exchange service described in section 271(c)(1)(A).

61. We expect that if a BOC seeks to proceed under Track B, as SBC does here, it will submit all relevant information reasonably within its control concerning each request for access and interconnection that it has received. Such information should include, but not be limited to, the names of the requesting carriers, the dates the requests were made, the nature of such requests, and whether the requests have resulted in interconnection agreements. Because we have not received this type of extensive information in this proceeding concerning the requests for access and interconnection received by SBC in Oklahoma, we cannot be certain how many qualifying requests it has received. Nonetheless, based on the record presently before us, we find that, at the very least, SBC has received several qualifying requests for access and interconnection that foreclose Track B.

62. As noted above, SBC represents in its application that, as of April 4, 1997, it had received 45 requests for "local interconnection and/or resale" in Oklahoma.¹⁸⁵ SBC did not submit information on many of the 45 requests.¹⁸⁶ Nevertheless, the record indicates that SBC has received requests from potential competitors for negotiation for access and interconnection to SBC's network that, if implemented, will satisfy the requirements of section 271(c)(1)(A). Indeed, we note that SBC has reached negotiated interconnection agreements with at least eight requesting carriers. Seven of these interconnection agreements have been approved by the Oklahoma Commission, two as recently as June 5, 1997.¹⁸⁷

Docket No. 97-1, Order, 12 FCC Rcd 3309, 3323 (1997) (*Ameritech Order*) (citing 47 C.F.R. § 1.65(a) (stating that it is essential that our decision on a section 271 application be based on an accurate current record). See *December 6th Public Notice*.

¹⁸⁵ SBC Application, Appendix-Volume I, Tab 18 at 7, para. 13.

¹⁸⁶ As CPI observes, SBC did not provide the Commission with the full list of carriers that initiated the 45 requests, nor information about these carriers or the type of access and interconnection they requested. CPI Apr. 28 Comments at 5-6. Further, as is evidenced by Cox's comments, although Cox reached a negotiated agreement with SBC on April 10, 1997, SBC did not disclose this fact in its section 271 application filed April 11, 1997, or in its subsequent comment filings. See Cox Apr. 28 Comments, Attachment at para. 3.

¹⁸⁷ SBC has state-approved interconnection agreements with the following carriers: Brooks Fiber, approved on October 22, 1996; USLD, approved on December 23, 1996; ICG Telecom Group, Inc. (ICG Telecom) and Sprint, approved on April 3, 1997; and American Communications Services, Inc. (ACSI), Cox, Dobson approved on June 5, 1997. SBC's interconnection agreement with Intermedia Communications has been pending approval

Further, four of the five state-approved interconnection agreements in the record, SBC's agreements with Brooks, Cox, ICG Telecom, and USLD, contain statements signifying the desire of these carriers to provide telephone exchange service to residential and business subscribers "exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier."¹⁸⁸ For example, the SBC-Cox interconnection agreement states that Cox seeks to interconnect with SBC in order to provide telephone exchange service to "residential and business end-users predominantly over [its own] telephone exchange service facilities in Oklahoma."¹⁸⁹

63. SBC does not allege, nor has the Oklahoma Commission certified, that any of these carriers has negotiated in bad faith or has failed to abide by its implementation schedule, to the extent one is contained in its agreement.¹⁹⁰ Thus, SBC has not availed itself of either of the exceptions in section 271(c)(1)(B). Moreover, SBC has not presented any evidence to suggest that these agreements will not result in the provision of telephone exchange service to residential and business subscribers described in section 271(c)(1)(A).¹⁹¹ Indeed, based on the record before us, it appears that at least two carriers -- Brooks and Cox -- have already taken affirmative steps to enter the residential and business local exchange markets.¹⁹² For example, Cox has stated its intention to provide telephone exchange service to residential and business subscribers in Oklahoma City using its upgraded cable television

since January 23, 1997. Letter from John W. Gray, Senior Staff Attorney, Oklahoma Corporation Commission, to William F. Caton, Acting Secretary, FCC (June 5, 1997).

¹⁸⁸ 47 U.S.C. § 271(c)(1)(A). See SBC Application, Appendix-Volume III, Tab 2, SBC-Brooks Agreement at 1; *Id.* at Tab 4, SBC-ICG Telecom Agreement at 1; *Id.* at Tab 7, SBC-USLD Agreement at 1; Letter from Laura H. Phillips, Counsel for Cox, to William F. Caton, Acting Secretary, FCC (May 27, 1997), SBC-Cox Interconnection Agreement at 1 (SBC-Cox Interconnection Agreement). We also note that six of the carriers with which SBC has interconnection agreements, ACSI, Brooks, Cox, Dobson, Sprint, and USLD, have filed for and received certificates of convenience and necessity for the provision of local exchange service and the remaining two, ICG Telecom and Intermedia, have applications pending for such certificates. SBC Application, Appendix-Volume I, Tab 18, Stafford Affidavit at 6-7.

¹⁸⁹ SBC-Cox Interconnection Agreement at 1.

¹⁹⁰ See, e.g., AT&T May 1 Comments at 16 n.6; AT&T Reply Comments at 25; LCI Apr. 28 Comments at 7; MCI Apr. 28 Comments at 3; MCI May 1 Comments at 17; Oklahoma AG Apr. 28 Comments at 7; Time Warner May 1 Comments at 32; WorldCom May 1 Comments at 14.

¹⁹¹ See Cox Apr. 28 Comments at 2 n.3 (asserting that SBC must provide evidence that facilities-based competition is not emerging before it can follow Track B, otherwise it could evade intent of section 271 by stonewalling interconnection negotiations and then claiming there are no facilities-based providers).

¹⁹² See also Oklahoma Commission Reply Comments at 3 n.2 (asserting that AT&T has made a verbal commitment to the Oklahoma Commission to be "up and running and providing both residential and business local exchange service in Oklahoma in October 1997.").

plant before the end of 1997.¹⁹³ In addition, as mentioned above, SBC's interconnection agreement with Brooks has already led to the provision of telephone exchange service to business subscribers.¹⁹⁴

64. We note further that it has been less than seven months since the Cox, ICG Telecom, and USLD interconnection agreements have been approved, and since Brooks has become operational. As discussed above, Congress envisioned there would be a "ramp-up" period during which a competing LEC implements its interconnection agreement.¹⁹⁵ We agree with NCTA, therefore, that the current absence of competing residential service in Oklahoma does not, on the record before us, mean that "no such provider has requested the access and interconnection described in [section 271(c)(1)(A)]."¹⁹⁶ Although SBC maintains that the Commission cannot base "section 271 determinations on the unverifiable, fluctuating plans of parties who have an incentive to color their supposed intentions to block [BOC in-region] interLATA entry,"¹⁹⁷ SBC has provided no evidence to suggest that any of the carriers that have expressed their intent to provide the telephone exchange service described in section 271(c)(1)(A) will not do so.¹⁹⁸ In fact, except for an unsupported assertion that AT&T, MCI,

¹⁹³ See Cox Reply Comments at 5. Cox has facilities that pass 95% of all residential customers in Oklahoma City and has installed a local switch that is "operational and internally tested." See *id.* See also Department of Justice Evaluation at 95. According to Cox, its ability to commence commercial operation in Oklahoma is dependent upon SBC's "willingness and cooperation in providing timely physical collocation, adequate numbering resources, interim number portability and necessary OSS functionality." Cox Reply Comments at 5. Cox notes that it plans to begin providing cable-based telecommunications services to residential and business customers in Orange County, CA in June 1997. *Id.* at 5 n.7. See also Cox Apr. 28 Comments at 1-2 (stating that it is actively engaged in entering the local market in Oklahoma City and expects to provide a significant facilities-based alternative to SBC for residential customers).

¹⁹⁴ See *supra* at para. 7. Although Brooks asserted in its May 1 comments that it has "no immediate plans" to commence a general offering of local exchange service in Oklahoma to residential customers, in its reply comments, Brooks indicates that it is presently exploring opportunities for providing residential service to multiple dwelling unit locations through direct on-net connections to Brooks' fiber facilities, is examining the use of wireless systems, and is investing approximately \$2.8 million in collocation facilities in Oklahoma, in addition to its previous investment in fiber optic transmission equipment and digital switching facilities. See Brooks May 1 Comments at 7; Brooks Reply Comments at 4-5 & n.12 ("Brooks will look for opportunities to offer residential local exchange service through whatever facilities-based alternatives may exist in a particular location at any time."). See also SBC June 24 *Ex Parte* at 1-2 (asserting that there is no technical reason why Brooks is incapable of service multiple dwelling units located along its networks).

¹⁹⁵ See *supra* at paras. 44-45.

¹⁹⁶ 47 U.S.C. § 271(c)(1)(A). See NCTA May 1 Comments at 8.

¹⁹⁷ SBC Reply Comments at 6.

¹⁹⁸ We note that USLD has stated that, although it plans to enter the local exchange market in Oklahoma initially through reselling SBC's local exchange retail services, over the long term, it plans to construct some of its own facilities and to integrate those facilities with SBC's network elements. USLD May 1 Comments at 2.

and Sprint plan to delay BOC entry by becoming facilities-based carriers at a "painfully slow pace,"¹⁹⁹ SBC does not maintain that its competitors in Oklahoma are engaging in any "strategic manipulation of local market entry" or have "intentionally delayed implementation" of their interconnection agreements in order to prevent SBC from entering the in-region, interLATA market in Oklahoma.²⁰⁰ Rather, the record is replete with allegations from competitors such as Brooks and Cox that their efforts to enter the local exchange market have been frustrated by the actions of SBC.²⁰¹

65. Although we find, and SBC has not disputed, that SBC has received several requests for access and interconnection that, if implemented, would satisfy the requirements of section 271(c)(1)(A), we do not today decide the meaning of the facilities-based requirement in section 271(c)(1)(A).²⁰² Some commenters assert that this requirement applies independently to both business and residential subscribers.²⁰³ The Department of Justice, in contrast, contends that this requirement permits a new entrant to serve one class of customers via resale, so long as the competitor's local exchange services as a whole are provided predominantly over its own facilities.²⁰⁴ We need not and do not decide this issue here because we conclude that, under either interpretation, the facts described above indicate that SBC has received several qualifying requests for access and interconnection. In reaching this conclusion, we find it unnecessary to address SBC's compliance with the competitive checklist requirements set forth in section 271(c)(2)(B). Nonetheless, we recognize that, even if SBC had satisfied the requirements of section 271(c)(1)(A), it would still be required to demonstrate compliance with each and every item of the competitive checklist, including access to physical collocation, cost-based unbundled loops, and reliable OSS functions before it may gain entry under Track A. We leave it to future applications to define the scope of these and other checklist requirements.

¹⁹⁹ SBC Reply Comments at 7.

²⁰⁰ See LCI Apr. 28 Comments at 7; TRA May 1 Comments at 14-15. Indeed, SBC's application provides numerous examples of alternative facilities-based networks in Oklahoma that, according to SBC, "could be, are being, or will be used to provide competing local exchange service to end user (retail service) customers, or . . . as alternative sources to [SBC's] wholesale service offerings." SBC Brief in Support, Appendix-Volume I, Tab 20 at 3, para. 5. SBC offers information on the scope of facilities-based service planned by, among others, Brooks, Cox, Multimedia Cablevision, Indian Nations Fiberoptic, ACSI and Tele-Communications Inc. (TCI). See *id.* at Tab 20.

²⁰¹ See, e.g., Cox May 1 Comments at 21-23; Brooks Reply Comments 8-10.

²⁰² See *supra* at para. 22.

²⁰³ Brooks May 1 Comments at 9; Sprint May 1 Comments at 11-13; CompTel Reply Comments at 9-12; ALTS Reply Comments at 3-6; AT&T Reply Comments at 25-30.

²⁰⁴ Department of Justice May 21 Addendum at 2-4.

V. CONCLUSION

66. We conclude, based on the record submitted in the instant proceeding, that SBC has failed to satisfy the requirements of section 271(c)(1), and we therefore deny SBC's application pursuant to section 271(d)(3). SBC has not demonstrated on this record that it is providing access and interconnection to an unaffiliated, facilities-based competing provider of telephone exchange service to residential and business subscribers, as required by section 271(c)(1)(A).²⁰⁵ We also conclude, under the circumstances presented in this case, that SBC has not satisfied section 271(c)(1)(B) because it has received several requests for access and interconnection within the meaning of section 271(c)(1)(A).²⁰⁶ We note, however, that SBC may refile its application in the future and demonstrate that circumstances have changed such that it has satisfied section 271(c)(1)(A) or has become eligible to proceed under section 271(c)(1)(B).²⁰⁷

67. Because we reach the merits of SBC's section 271 application, we dismiss ALTS' motion to dismiss as moot. Further, given the extensive legal analysis contained herein, we disagree with ALTS that SBC's application is so frivolous that it warrants the imposition of sanctions. We therefore deny ALTS' request for sanctions against SBC.

VI. ORDERING CLAUSES

68. Accordingly, IT IS ORDERED that, pursuant to sections 4(i), 4(j), and 271 of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 154(j), 271, SBC Communications Inc.'s application to provide in-region interLATA service in the State of Oklahoma filed on April 11, 1997, IS DENIED.

69. IT IS FURTHER ORDERED that the motion to dismiss filed by the Association for Local Telecommunications Services on April 23, 1997, IS DISMISSED as moot.

²⁰⁵ 47 U.S.C. § 271(c)(1)(A).

²⁰⁶ We find it unnecessary to address BellSouth's argument concerning the appropriate deference to give the Department of Justice's interpretation of sections 271(c)(1)(A) and 271(c)(1)(B). See BellSouth Reply Comments at 5-6. See also SBC Reply Comments at 14-15 (asserting that the Commission should only give substantial weight to the Department of Justice's views on matters within its antitrust expertise). Although we agree with the Department of Justice's evaluation on the issues decided herein, our extensive analysis demonstrates that we arrived at our interpretation of section 271(c)(1) independently. In light of this, we find it unnecessary to consider the circumstances under which "[t]he Commission shall give substantial weight to the Attorney General's evaluation." 47 U.S.C. § 271(d)(2)(A).

²⁰⁷ See LCI Apr. 28 Comments at 8 (asserting that there is no statutory bar to the refiling of a BOC section 271 application).

70. IT IS FURTHER ORDERED that the request for sanctions filed by the Association for Local Telecommunications Services on April 23, 1997, IS DENIED.

71. IT IS FURTHER ORDERED that the Motion to Accept Late Filed Pleading by the Battle Group, Inc. d/b/a/ TBG Communications IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary

APPENDIX

COMMENTERS ON SBC 271 APPLICATION
FOR OKLAHOMA

1. Alarm Industry Communications Committee (AICC)
2. Ameritech
3. Association for Local Telecommunications Services (ALTS)
4. AT&T Corp. and AT&T Communications of the Southwest, Inc. (AT&T)
5. Attorneys General of Delaware, Florida, Iowa, Maryland, Massachusetts, Mississippi, Missouri, New York, North Dakota, Oklahoma, Utah, West Virginia and Wisconsin (State Attorneys General)
6. Bell Atlantic
7. BellSouth Corporation (BellSouth)
8. Brooks Fiber Properties, Inc. (Brooks)
9. Competition Policy Institute (CPI)
10. Competitive Telecommunications Association (CompTel)
11. Cox Communications, Inc. (Cox)
12. Dobson Wireless, Inc. (Dobson)
13. LCI International Telecom Corp. (LCI)
14. MCI Telecommunications Corporation (MCI)
15. National Cable Television Association (NCTA)
16. NYNEX Telephone Companies (NYNEX)
17. Oklahoma Attorney General (Oklahoma AG)
18. Oklahoma Corporation Commission (Oklahoma Commission)
19. Paging and Narrowband PCS Alliance of the Personal Communications Industry Association
20. Southwestern Bell Telephone Company (SBC)
21. Sprint Communications Company L.P. (Sprint)
22. Telecommunications Resellers Association (TRA)
23. Texas Association of Long Distance Telephone Companies
24. Time Warner Communications Holdings, Inc. (Time Warner)
25. United States Department of Justice (Department of Justice)
26. U. S. Long Distance (USLD)
27. U S WEST, Inc. (U S West)
28. Valu-Line of Kansas, Inc.
29. WorldCom, Inc. (WorldCom)

**SEPARATE STATEMENT OF
CHAIRMAN REED E. HUNDT**

RE: *Application by SBC Communications Inc., Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region, InterLATA Services in Oklahoma, CC Docket No. 97-121, June 25, 1997*

In its application, SBC stresses that "Southwestern Bell can use its brand name, reputation for providing reliable, high-quality telephone service, and network expertise to inject competition into interLATA services in Oklahoma, particularly for the business of ordinary residential callers. . . . Southwestern Bell will be a committed, effective new entrant into the interLATA business in Oklahoma, and Oklahoma consumers will benefit from this new competition for all telecommunications services."¹ Although the Department of Justice did not recommend approval of the SBC application, the Department did note: "InterLATA markets remain highly concentrated and imperfectly competitive . . . and it is reasonable to conclude that additional entry, particularly, by firms with the competitive assets of the [Bell Operating Companies], is likely to provide additional competitive benefits."²

I agree strongly that the entry into the long distance market by SBC or a carrier with similar assets would promote competition and benefit consumers. The Commission has previously noted concern about evidence with regard to lock-step increases in basic rates among the three major interexchange carriers that "suggests that there may be tacit price coordination among AT&T, MCI and Sprint."³

As SBC itself emphasizes, SBC's assets -- including its network, customer information, brand recognition, and financial strength -- would make it a formidable competitor in the market for long-distance or bundled local-long distance service. The experience of a relatively small incumbent local exchange carrier, Southern New England Telephone, suggests how effective individual Bell Companies will be as interexchange competitors when they choose to do what is necessary to meet the terms of Section 271 of the Communications Act.⁴

¹ SBC Brief in Support of its Application for Provision of In-Region InterLATA Services in Oklahoma, at iv (filed Apr. 11, 1997).

² Department of Justice Evaluation at 3-4 (filed May 16, 1997).

³ *Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, 11 FCC Rcd 3271, 3314 ¶ 82 (1995).

⁴ According to reports, Southern New England Telephone has gained a market share of 35% of the access lines in Connecticut. Merrill Lynch, *Telecom Services -- RBOCs & GTE. Fourth Quarter Review: Defying the Bears Once Again, Reported Robust EPS Growth; Regulatory Cloud Beginning to Lift*, at 8 (Feb. 19, 1997). See also, Southern New England Tel. Co., *SNET First Quarter EPS \$0.70 Before Extraordinary Charge*, Press Release (Apr. 23, 1997).

Both a Bell Company's failure to open its markets in accordance with the Communications Act, and its combination with its strongest potential competitor, would frustrate the pro-competitive purposes of the Telecommunications Act of 1996 and deny consumers that Act's potential benefits. There is a better way to achieve the consumer benefits of Bell Company entry into long distance, and that is to meet fully the standards Congress set in Section 271.

The power to enter the long distance market lies in the hands of the Bell Companies -- if they have the will, the law makes clear the way. In the present application, SBC has plainly failed to meet the standards set forth in Section 271. For that reason, the application must be denied.